
OLR Bill Analysis

sHB 5069

AN ACT CONCERNING LOW WAGE EMPLOYERS.

SUMMARY:

Starting January 1, 2015, this bill assesses a quarterly fee on (1) employers with 500 or more employees and (2) franchisors whose franchisees collectively employ 500 or more employees. These employers and franchisors ("covered employers") must pay a \$1- per-work-hour fee for each person who was (1) on the employer's payroll, or the payroll of one of the franchisor's franchisees, for the last 90 days of the most recently completed calendar quarter and (2) paid wages by the employer or franchisee that were less than 130% of the state's minimum wage.

The bill requires the labor commissioner to adopt guidelines by October 1, 2014 for determining and collecting the fees. The fees start to accrue on January 1, 2015. The labor commissioner must collect the fees within 60 days after the end of the quarter for which they are assessed (presumably by the labor commissioner) and deposit them with the treasurer for deposit in the General Fund.

Any covered employer aggrieved by the commissioner's fee determination can file a complaint with the commissioner, who must investigate and may hold a hearing, after which, she must send the covered employer a written decision. If the covered employer prevails, it must be awarded reasonable attorney's fees and costs. It can also appeal the commissioner's decision to the Superior Court.

The bill also (1) prohibits covered employers from taking certain actions to avoid the fees; (2) allows the labor commissioner to ask the attorney general to investigate violations; (3) includes a severability clause so that if a court finds any provision invalid, the remaining provisions are not affected; and (4) specifies that it does not preempt or

override the terms of any collective bargaining agreement effective before January 1, 2015.

EFFECTIVE DATE: Upon passage

COVERED EMPLOYERS

Employers

An employer subject to the bill's provisions is (1) any person, firm, business, educational institution, corporation, limited liability company, or other entity that directly employed at least 500 employees in the state in any one of the previous calendar year's quarters. It does not include any private nonprofit entity, the state, or the state's instrumentalities and political subdivisions. The determination whether an employer is subject to the fees must be made (presumably by the labor commissioner) annually on January 1, based on the quarterly wage information employers submit for unemployment tax purposes.

Franchisors

The bill subjects franchisors to the bill's provisions if their franchisees collectively employed 500 or more employees in the state in any one of the previous year's quarters. A franchisor is an entity that grants a franchise to another entity, including the authority to use a trademark, trade name, service mark, or other identifying symbol or name under a franchise. A franchisee is the entity to which a franchise is granted by the franchisor.

By January 1, 2015, and annually thereafter, the bill requires employers submitting their quarterly wage reports for unemployment tax purposes to indicate, on a form and in a manner determined by the labor commissioner, if they are a franchisee, and if so, their franchisor's contact information and any other information the commissioner requests. The determination whether a franchisor is subject to the bill's provisions must be made annually on January 15 based on these responses.

In general, franchisors are not considered the employers of the

employees who work in a franchise. Instead, because the franchisee who owns the franchise controls the hiring, firing, wage, and scheduling decisions for these workers, the franchisee is typically considered their employer under wage, unemployment, workers' compensation, and other labor-related laws. Thus, it is unclear whether a franchisor could be held financially liable for decisions over which it does not have control.

FEES

Under the bill, covered employers must pay a quarterly fee of \$1 per hour worked during the assessed quarter by each person who was (1) on the employer's or franchisee's payroll for the last 90 days of the most recently completed calendar quarter and (2) paid wages by the employer or franchisee that were not at least 130% of the state's minimum wage. (For 2015's scheduled \$9.15 minimum wage, this threshold will be \$11.90 per hour.) Employers do not have to pay the fee for employees at parks, camps, or resorts open less than six months a year.

OTHER PROVISIONS

Prohibited Actions and Attorney General Investigations

The bill prohibits covered employers from trying to avoid the fee by designating (or causing a franchisee to designate) an employee as an independent contractor or temporary employee, reducing an employee's work hours, or terminating an employee.

The labor commissioner can ask the attorney general to investigate a violation of this provision or a covered employer's failure to pay the required fee. Any information obtained in the investigation is exempt from public disclosure under the state's Freedom of Information Act. If the attorney general finds that a covered employer has violated or is violating the bill, he can bring a civil suit in Hartford Superior Court.

Severability

The bill specifies that, if a court finds any of the bill's provisions invalid, its remaining provisions remain in effect if they can be implemented without the invalid provision.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 7 Nay 3 (03/18/2014)